

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Lamarr Dash, M.D.)
 Personal Property Account No. 087383) Davidson County
 Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$123,000	\$36,900

On July 9, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. In attendance at the hearing were the appellant Lamarr Dash, M.D. and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

Dr. Dash maintains a small medical office at 121 21st Avenue North in Nashville. In 2007, as in every preceding tax year since 2000, he failed to complete and return the tangible personal property schedule required by Tenn. Code Ann. section 67-5-903 in a timely manner. Consequently, the Assessor made a “forced assessment” on this account in the amount shown above.¹ The notice of this assessment, which was mailed to the above address on May 18, 2007, informed the taxpayer that failure to appeal to the county board by the June 15, 2007 deadline “may result in the assessment becoming final without further right of appeal.”

Unfortunately, it was not until this deadline had passed that Dr. Dash contacted the Assessor's office in an effort to obtain relief from the sharply higher assessment. Having no other possible administrative recourse at that point, he lodged this complaint with the State Board.

Although a taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

¹Due apparently to a change in the Assessor's methodology for determining the amounts of forced assessments on non-reporting personal property accounts in Davidson County, the valuation of the subject property for tax year 2007 drastically exceeded the \$1,193 appraisal in 2006. See State Board Rule 0600-5-.06(5).

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In this regard, the Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived with the consent of the parties. [Emphasis added.]

Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 10.

However, as amended by Chapter No. 133 of the Public Acts of 2007, Tenn. Code Ann. section 67-5-1412(e) states (in relevant part) that:

The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

Historically, the Assessment Appeals Commission (appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502) has construed the term "reasonable cause" in this context to mean some circumstance beyond the taxpayer's control (such as disability or illness). See, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

Respectfully, in light of this longstanding interpretation, the administrative judge cannot recommend acceptance of this appeal. It is undisputed that the taxpayer was duly notified of the increased assessment of the subject property. Further, by Dr. Dash's own admission, his failure to contest this assessment before the county board was mainly attributable to an "oversight" on his part. As the Assessment Appeals Commission pointedly proclaimed in the case of Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993):

A taxpayer...cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal.

Id. at p. 2.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of October, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Lamarr A. Dash, M.D.
Kenneth Vinson, Davidson County Assessor's Office
Jo Ann North, Davidson County Assessor of Property

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